

NORTH DAKOTA RACING COMMISSION
Emergency Live and Telephone Meeting
Minerva's – Kelly Inn
1800 N. 12th Street, Bismarck, ND
Tuesday, June 30, 2009 - 1:00 p.m. (central time)

Call to Order:

Chairman Patrick Weir called the meeting to order at 1:00 p.m. All commissioners were in attendance.

Chairman Weir announced that this was the last meeting for Commissioner DeAnn Pladson. She was recognized for her years of service on the commission and sincere thanks were given.

Chairman Weir announced that on July 29, 2009, he accepted the resignation of Randy Blaseg, Director of Racing which became effective immediately. A decision regarding the replacement for this position will be announced at a later date.

Present: Chairman Patrick Weir; Commissioners: DeAnn Pladson; Winston Satran; Tom Secret and Clarence Frederick. Also present was the Administrative Staff Officer, Helen Tessmann.

Others Present: Heather Benson, Julie Sornsin-Cardwell, Leigh Backhaus, Lee Harsche, Scott Horst, John Bubel, Leon Glasser, Kevin Hall, John Ford, Wayne Slater, Mike Cichy, John Gerber, Joe Cichy, Mike Herrmann, Norman Glinz, Twilla Glinz, Gail Hrdlicka, David Bernson and Richard Nevin.

AGENDA

1. **Approval of Minutes** – May 20, 2009 Meeting
2. **2009 HRND Harness Meet** – Approved at December 9th, 2008 Meeting
 - a. Update of 2009 Dates
 - b. Approval of Officials, Tote, Photo Finish
3. **Update on WatchandWager.com LLC Service Provider License** – Account Wagering
 - a. Background checks completed
 - b. Application to be submitted for Attorney General's Approval
4. **Consideration of New Service Providers Applications**
 - a. Megatote, LLC (account wagering)
 - b. Avatar Ventures, LLC (account wagering)
5. **Consideration of New Site Operator's License Application**
 - American God Gymnastics

6. **Discuss and Develop Kiosk Grant Application**
7. **Report of Percent of Handle Wagered on all Breeds**
8. **Approval of Breeders Fund Administrator's Payment**
9. **Continued discussion of Office matters**
 - State Employee Compensation Adjustments
 - By legislative direction for general increase - Effective July 1, 2009
10. **ND Horsemen's Council Recommendations**
 - a. Recommendation and petition concerning the Director of Racing's actions regarding WSI rules and procedures at Chippewa Downs on June 4-6, 2009.
 - b. Recommendation concerning change in North Dakota/ARCI rules for steroids testing in 2009.
 - c. Recommendation to support FCHRA request for \$12,500 from Promotion Fund and to recognize FCHRA as a member of the ND Horsemen's Council.
 - d. Recommendation to support HRND on stance regarding Harness Racing in 2009.
 - e. Recommendation of job descriptions for both Director of Racing and Administrative Staff Officer for North Dakota Racing Commission.
11. **Any other business which may PROPERLY come before the commission**
12. **Adjournment**

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1. **Approval of Minutes – May 20, 2009 Meeting**

Previously all commissioners had received a copy of the May 20, 2009 commission meeting minutes.

A motion was made by Commissioner Pladson and seconded by Commissioner Frederick to approve the minutes of the May 20, 2009 meeting as presented. All commissioners voted aye and hearing no negative vote, the motion carried.

2. **2009 HRND Harness Meet**

Approval of the harness meet was made at the December 9th, 2008 meeting. An update of race dates was requested by the commission to be presented at this meeting.

Heather Benson, ND Horse Park, presented material to the commissioners previously and reported that she did a research of other horse parks and how they handled the harness races. When having the harness race in September, several things hinder the race, i.e., other state races, conflicting dates, family activities, the weather, etc. She also informed the commission of the financial hardships to the race park that result from the harness race.

Chairman Weir stated that he felt that the harness racing people deserve the opportunity to have a scheduled race in North Dakota. Heather indicated that they were looking at September 11, 12 and 13. She stated that a race in May would probably bring in more revenue, if the weather cooperated. Commissioner Pladson asked, if the race was not held, what would happen to the dollars that had been set aside for this race. Heather

indicated that the purse money is available, however there is an additional \$25,000 needed for other expenses, i.e. ambulance; drug testing, photo finish, etc.

Julie Sornsins-Cardwell, Board President of Horse Racing North Dakota, stated that they are more than willing to have the race, but would like some suggestions on how to make it happen with the current funds. Heather suggested that maybe the Harness Race Association could take over the planning of the event in the future as it did prior to 2003. She suggested that the 2009 harness race be held on a Friday, Saturday only with longer hours.

Chairman Weir suggested that the ND Racing Commission share a percentage of the anticipated loss that would result if the harness race was held September 11, 12 and 13, 2009.

A motion was made by Commissioner Pladson and seconded by Commissioner Secret to approve the NDRC's participation in the anticipated loss in the amount of one-half (1/2), but no more than \$12,500.00. All commissioners voted aye and hearing no negative vote, the motion carried.

A motion was made by Commissioner Secret and seconded by Commissioner Pladson to amend and permit the Horse Park to run the harness race to 2 days with longer hours. All commissioners voted aye and hearing no negative vote, the motion carried.

3. Update on WatchandWager.com LLC Service Provider License

Helen Tessmann, NDRC Administrative Staff Officer, reported receiving Butcher and Associates investigative report for WatchandWager LLC and fingerprint cards will need to be resubmitted. They were not clear enough to be submitted and that is not a major problem just a matter of resubmitting. Once the commissioners have approved the background information as submitted in your packets and if they are satisfactory, the next step is to submit the application on to the Attorney General's office for approval. Once that approval has been received then the license can be granted.

A motion was made by Commissioner Secret and seconded by Commissioner Frederick to approve the WatchandWager LLC application with those exceptions to be conformed with; Commissioner Satran and Commissioner Pladson requested further discussion.

Commissioner Pladson asked if they can grant conditional approval on licenses. Helen stated that at the last meeting we could not, as per advise of legal counsel. Commissioner Pladson said she thinks it can't be conditional and she thinks all the requirements and conditions must be met before the license can be granted.

A motion was amended by Commissioner Secret we will approve the application subject to those conditions being met and when complied with will automatically be approved from this motion today. A call for a second was made, no response was given.

Chairman Weir said we are back to the concern raised by Commissioners Pladson and Satran. Commissioner Satran asked if they were discussing the application from Paul and Linda Makin. The response was 'yes'. Commissioner Satran stated that Mr. Butcher's conclusions led him to believe that we need further investigation of this entity; on one hand it appears that they have substantial financial backing but he also uncovered information that he might have been involved in some purchasing and selling schemes that have questions to them. I think we need clarification on that before we approve this. Mr. Makin is well known in the horse breeding and racing circle and it sounds like he has been in lots of real estate, but then there was a collapse of a real estate venture that needs to be clarified.

Commissioner Secret stated that it was his understanding that from that report that had been approved except for fingerprints. Chairman Weir states that it will require action from the Attorney General to approve

this and given the concerns expressed by two (2) of the Commissioners, I am going to suggest we get the background checks completed; we send all the information to the Attorney General since they have resources we don't, we rely on the Attorney General. Because of the great concerns set out in the investigative report Commissioners Secrest and Frederick withdrew their original motion.

Chairman Weir asked Helen to expedite and follow getting those fingerprints done and get that application to the Attorney General for his approval as soon as possible and based on the completion of what the Attorney General needs to have done and it is approved a meeting will be scheduled.

4. Consideration of New Service Providers Applications

Mike Herrmann, President of Megatote, LLC (account wagering) reported that he and his partners have come up with way to introduce and excite the younger generation in developing an interest in the horse racing wagering. He said they propose to open up an ADW in North Dakota. Mike feels they will tap into a younger player that is not being pursued right now.

Butcher & Associates final report has not come into the NDRC on this application. Chairman Weir asked Helen to contact Mr. Butcher and see if he can expedite it for us. Chairman Weir asked Mr. Herrmann why a lawyer in Illinois is the Director of Player Services and what does he do? Mr. Herrmann said he just happens to be a lawyer and doesn't have anything to do with it. Mr. Cichy explained that a Director of Player Services will be involved in the software development and make the changes in what is an experimental system. Chairman Weir asked what the lawyer's expertise is in this area. Mr. Cichy said he is 29 years old and plays online and the whole context here is trying to develop a system that will yield online players and will not require them to take any 16 hour course in handicap.

Chairman Weir asked for a representative of the Avatar Ventures, LLC (account wagering) to address the commission. John Gerber, one partner of four, is based out of Columbus, OH. One partner has been in the racing business for 25-30 years as a horse owner and breeder. He is a large bettor in horse racing. They want to open wagering in North Dakota. Chairman Satran asked why they chose North Dakota. The answer was taxes. Commissioner Secrest stated that this commission had a large part in legislation to lower the taxes and this was done to attract people like you. Commission Satran asked if they had any idea how much would be wagered per year. Mr. Gerber stated that one individual player wagered 5 – 10 million a year. The players coming in initially are harness race players.

Helen reported that the commission is waiting for Butcher and Associates investigative report. Chairman Weir asked Helen to follow up with Butcher & Associates.

Julie Sornsini-Cardwell asked how the racing commission benefits. Mr. Cichy stated that the commission receives a percentage of every dollar bet. No other state has become competitive with the lower taxes provided here. Chairman Weir stated that we are more in line with Oregon; however we don't have the additional fees associated with wagering. We want to make this a consumer friendly commission consistent with our enforcement responsibilities.

Julie asked about the process of auditing all these wagers, charities, etc. Commissioner Secrest stated they are counting on our accountants to do things right. We spend a lot of time securitizing them. Chairman Weir said we cannot lose sight of the fact that charities like the North Dakota Horse Park that the way it is set up by law in North Dakota. These horsemen in the room know this because they supported our efforts to exempt the charities from legal responsibility in the clearing process of these bets. We were told we could not do it because of constitutional prohibition. That means, Heather Benson and I have worked very closely to keep in the loop the State Auditors and the Attorney General because it is, by necessity, an exposure that the charities have and there is nothing we can do about that other than be super vigilant to assure that when the funds are reconciled they are reconciled appropriately and in a timely fashion.

Heather Benson asked what charities will be associated with Megatote and WatchandWager? Is there direction provided to help them find a charity? Heather said she is an advocate of keeping the money in the horse racing community. Commissioner Secrest stated that it is based on performance in the opinion of the Racing Commission if they are diligent too. Chairman Weir indicated that it is not the appropriate roll of the Racing Commission to be telling applicants which charity they ought to pick. However, if you have a suggestion so that your group and the horseman's associations are facing a level playing field why don't you bring that up to the Horseman's Council and give us a report.

5. Consideration of New Site Operator's License Application

American Gold Gymnastics being represented by John Ford states previous discussions are apropos to this application. Some of the constraints that the service providers deal with, with charities, are their financial wherewithal. Lein Games Racing has contracted with Horse Race North Dakota for account wagering. The charity has contracts with merchant accounts for processing deposits into transactions; we now have a cap of \$84,000.00 a month with Horse Race ND. That is a cap that we have with the automated ACH processor. When you look for charities to work with, their financial wherewithal comes into play to a significant degree. That is what prompted the application you have before you the American Gold Gymnastics. They are currently licensed with the ND Gaming Commission, has been through Attorney General review and they operate two charitable gaming operations in Fargo, ND; they have been in operation for 25 years; they have a staff; they are a functioning organization which serves about 1500 kids in the Fargo area. They present a very qualified charity to work with and being able to process transactions. Because as you know the Commission has taken the view that those transactions should be processed with the charity and deposited into a charity account. With that understanding, American Gold looks forward to your favorable review.

Commissioner Secrest asked if there were any restrictions. Helen stated once the entity is licensed, the next step is for employees to be licensed.

A motion was made by Commissioner Secrest and seconded by Commissioner Satran to approve the American Gold Gymnastics site operators license application. All commissioners voted aye and hearing no negative vote, the motion carried.

6. Discuss and Develop Kiosk Grant Application

Mr. Ford stated that given the change in the Racing Director and giving the opportunity for the commission to review its financial situation and position with the Promotion Fund and with the upcoming New Year, starting July 1, I would request that this request be deferred to the next regular scheduled meeting. Commissioner Weir said so accomplished.

7. Report of Percent of Handle Wagered on all Breeds

Previously a report was given to the commissioners by Thompson Accounting Service. Chairman Weir stated that this is the Horsemen's Association and the commission's ongoing effort to get some hard data on the disbursement of breeder's funds to the different breeds. At the last Horsemen's Council meeting, it was stated they were also going to be gathering some information for the commission's consideration. Where are we with the Horsemen's Council?

Heather reported that at the April meeting they deferred this question until Fall to include fact findings from other various states. Chairman Weir asked if we can get the information as to what was done at Belcourt. Scott Horst stated he had that information in writing. Mr. Horst reported that there were 13 wins for quarter horse; 12 – 2nd place and 8 - 3rd place winners; 3 – wins for thoroughbreds; 5 – 2nd place and 4 – 3rd place winners. 33 quarter horses and 12 thoroughbred horses will be receiving breeder's fund money.

Chairman Weir asked for a copy of Scott's report. Chairman Weir asked the Administrative Staff Officer to start a file of reports on this matter for next Fall's consideration.

A question was asked if this would take any administrative rule changes? Chairman Weir stated he was not convinced that it would require an administrative rule change. Commissioner Pladson stated it could potentially, that is why we need to look at it. Commissioner Weir said they want to do it right and that is why they will act at the first meeting after the race season is over.

8. Approval of Breeders Fund Administrator's Payment

Gail Hrdlicka, with MCC Services LLC, is the ND Breeder's Fund Administrator. She reported on the issue regarding the additional hours worked that resulted in an overage of the contract estimated hours of 480.

Ms. Hrdlicka explained that her hours worked in May went over the estimated 480 hours. She advised the Director in January that she was running out of hours to do the allotted work. The breeder's fund awards process takes an awful lot of time. Winston had asked for a report that would back her request for additional hours in the future. Her report shows the duties performed and the time it took. The second report shows each month's payment and hours. She advised the commission that there were two years of filing that had not been completed.

The 480 hours were based on 15 minutes per application. The 15 minutes would only involve the receipt of the application and its validity. An example was shown in the report of the steps taken while processing just a new foal application.

Commissioner Satran thanked Ms. Hrdlicka for detailing the steps necessary to complete the process. Ms. Hrdlicka made a suggestion that the hours be increased to 550 – 650 estimated hours. The procedures for the breeders fund awards is very detailed and when audited it was reported that there were no errors in the 2008 disbursements.

A discussion was held on the possibility of a proposed plan for streamlining the data processing of the breeders registry.

Commissioner Satran stated that he asked Ms. Hrdlicka to present this report. He asked the Administrative Staff Officer how the Director came up with the 480 hours. Helen stated that the Director estimated these hours without a concrete log of these responsibilities. Today, Ms. Hrdlicka's report gives a more accurate picture for the time frame of the workload for the Breeder's Fund administrative duties for the past year.

A motion was made by Commissioner Satran to consider amending the contract to 524 hours, but Ms. Hrdlicka would have to prove the work being done. Chairman Weir said he was not comfortable in leaving the hour amount open-ended. Commissioner Pladson said she would take a more conservative approach and leave the hours at 480 because with one year behind us it may be done with fewer hours the next year. Keep the commission informed of the hours and when they are getting close to the end show how the hours were used. The work has been excellent and we need someone like you to perform with zero errors. Being no second on this motion, the motion was withdrawn.

A motion was made by Commissioner Satran and Seconded by Commissioner Pladson to approve the hours submitted and to pay MCC Services \$1,096.32 and to be paid out of the Breeder's Fund. An individual roll call was taken: Tom – Y, Winston – Y, DeAnn – Y, Clarence – Y and Pat – Y. Passed.

A 10 minute break was taken. Meeting reconvened at 3:00 p.m.

9. Continued discussion of Office matters

Chairman Weir suggested this item be deferred to the next meeting. No opposition was made.

10. ND Horsemen's Council Recommendations

a. Heather Benson provided a signed petition by 10 people who were required to fill out a WSI form to receive their license. She asked the commission to clarify what the correct procedure will be used for the Fargo race to complete a WSI form. Chairman Weir felt that it is the responsibility of the owner to see to it they have the proper WSI coverage for their employees. It is up to the Horse Park and ORDA to oversee and restrict the back barn. Heather stated that her understanding from other states was that it was up to the owner to have Worker's comp and if WSI finds out there is a violation, then WSI contacts the racing commission so the racing commission can decide if they want to penalize the owner.

b. Chairman Weir read a letter from Dan Fick, Executive Vice President and Director the Jockey Club in Kentucky. Mr. Fick commended NDRC for the support given to the Racing Commissioners' International (RCI) model rules: "The fact that ND has been farsighted enough to pass legislation whereby the state and the Racing Commission can adopt the RCI model rules by accord, is a model for other states." Heather spoke on the changes that the North Dakota/ARCI rules for steroid testing in 2009. North Dakota does not allow the same steroid drug that other surrounding states do and the Horseman's Council would like to know how to handle this when testing. She spoke to the Steward, Sam on how this was being handled.

Commissioner Pladson stated that they cannot issue a variance from the Administrative rules that require North Dakota to follow the ARCI rules.

Chairman Weir will check the administrative rules and talk with Bill Peterson on this subject. He will send Heather a letter on what his conclusions are. Then on Commissioner Secrest's suggestion about if in fact we are bound by the model rule in steroid use is band completely. If there is an alternative step we can take in advance then we can let you know.

The Steward would like direction from the commission on what punishment the commission wants him to take. Chairman Weir said that the Steward could guide the commission with his own determination of the violation.

c. John Bubel, president of the FCHRA, is requesting \$12,500.00 from the Promotion Fund for basic needs to keep the organization in operation. Commissioner Secrest asked what the organization is doing. Heather Benson stated that the holders are paying for the insurance, the banking, everything. If Fargo should fail, racing would be able to continue at one of the smaller tracks without a disruption due to lack of equipment. Mr. Bubel stated that they are paying a storage fee and a small monthly wage to their secretary. Chairman Weir asked if Fair Circuit owns the trailer that we are using for licensing. Heather Benson stated there are 4 trailers. Commissioner Weir stated that the Fair Circuit is more of an obligation of the ND Horse Park. Fargo is using the equipment, probably more than 1 trailer and they have not been paid anything. He wants Fair Circuit to continue, but he wants to know who owns what. He is in favor of supporting this request, but I want it clearly understood that this is the end of it. There will be no further ongoing financial obligation of the Racing Commission. Chairman Weir asked for a report in a month on what the Horse Park is going to do, who is going to be the title owner, who owns the trailers and if it is being doubly insured.

Heather asked if a member of the FCHRA could be appointed to the ND Horseman's Council.

A motion was made by Commissioner Satran and seconded by Commissioner Secrest to allow the ND Horsemen's Council to appoint someone from the Fair Circuit Association as a member of the Horsemen's Council. All commissioners voted aye and hearing no negative vote, the motion carried.

d. Previously discussed item #2.

e. Heather Benson stated that at the last ND Horsemen's Council meeting they recommended that job descriptions for both the Director of Racing and the Administrative Staff Officer be provided by the North

Dakota Racing Commission. Due to the recent changes in the Racing Commission office, she asked that the Horsemen Council be allowed to discuss this at the next council meeting and make a better recommendation.

11. Any other business which may PROPERLY come before the commission

John Ford asked the commission to consider adding another page to the commission's website where it would list the websites that are licensed and operated by the service providers and charities authorized in the state. Also, he has had requests that we have Jai a Lai wagering, pari-mutuel wagering at the websites. What is the best route to take to have the commission confirm that we can accept pari-mutuel wagering on Jai a Lai in addition to Greyhound.

Chairman Weir suggested Mr. Ford work with Helen on accomplishing the additional page on the commission's website. In regard to the Jai a Lai, he asked John to send them a formal request and they will take it up with their counsel.

The commission was asked if the new director appointee would be starting prior to the Fargo race. Chairman Weir said they were going to work on this immediately. Also it was asked who they should submit their inquiries to at the racing commission. Chairman Weir indicated that they should first go through Helen and she will contact the commissioners.

Helen said there should be a motion to appoint a commissioner to approve payments of vouchers.

A motion was made by Chairman Weir and seconded by Commissioner Frederick to appoint Commissioner Satran to approve payments. All commissioners voted aye and hearing no negative vote, the motion carried.

12. Adjournment

Commissioner Satran made the motion to adjourn then meeting. Commissioner Frederick seconded the motion. The meeting was adjourned at 4:55 p.m.